Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

In their written submission the tenants raised a concern that the Application for Dispute Resolution was not signed by the same person as the person identified as the landlord in the tenancy agreement. I confirmed with the female landlord, who is the party identified as the landlord on the tenancy agreement, that her husband was the person who signed the Application and that both are named as applicants on the Application. I accept the male landlord has authority to sign the Application.

During the hearing the landlord raised a concern regarding the tenants' evidence specifically that the tenants provided no explanation or numbering in order to find documents being referred to in testimony. While this provides an inconvenience to both the landlord and to the Dispute Resolution Officer, I note it is not required under the Rules of Procedure.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for monies owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on July 10, 2008 for a 1 year fixed term tenancy beginning on August 15, 2008 that converted to a month to month tenancy on August 16, 2009 for a monthly rent of $2,195.00 due on the 15th of each month and a security deposit of $1,100.00 was paid. The tenancy ended when the tenants vacated the unit on July 15, 2010.

The tenant also submitted a copy a Condition Inspection Report that the tenants contend they did not receive until 15 days after they moved out. The report indicates the possession date is August 15, 2008; the move in inspection date was July 10, 2008; the move out dated was July 15, 2010; and the move out inspection dated was July 17, 2010.

The landlord testified the female landlord completed the move in inspection on July 10, 2008 and that she completed the report later and forwarded to the tenants for them to sign but they never returned a copy.

The tenants have not signed either the move in or move out portion of the report. The tenants testified that there was no move in inspection and that July 10, 2008 was the day they viewed the rental unit to decide if they wanted it and the day they signed the tenancy agreement.

The report indicates that on move in all areas were good with some items noted as new and where an appliance is stainless steel there is an indication that there were no scratches. The report shows that on move out there was damage to walls that had been touched up with wrong coloured paint; scratches on the stove and a broken button on the microwave; scratches and dents in the hardwood flooring; a broken fixture from the hall (chandelier); dented banister; dirty glass on the fireplace.

The landlord provided a receipt for the purchase of an over the range microwave and for its delivery and an invoice that outlines the compensation sought. The landlords seek total compensation as outlined in the following table:

Description	Amount
Front Door replacement	$520.00
Dead bolt replacement	$89.99
Chandelier replacement	$1012.74
Paint/fill/sand	$6,000.00
Microwave replacement	$320.00
Yard Work	$250.00
Reduced sale price of house due to floor damage	$2,800.00
Lost rent (unrentable for 1 month)	$2,195.00
Total	$13,187.73

Both parties submitted substantial photographic evidence both by way of print and electronic media. The landlords provided a disc and printed pictures and the tenants provided a memory stick and printed pictures.

The landlord contends that despite the date stamp on some of the tenants' photographs the tenant has manipulated and therefore falsified the dates of the photographs submitted.

The tenants have also submitted a substantial volume of emails and correspondence between the tenants and the landlord throughout the course of the tenancy.

Analysis

In making a claim for loss or damages the party making the claim must provide sufficient evidence to support and establish the following four points:

1. That loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the loss or damage; and
4. The steps taken to mitigate the damage or loss.

In addition, when a landlord makes a claim for damage to the rental unit the burden of proof rests with the landlord to establish both the condition of the rental unit at the start of the tenancy and at the end of the tenancy. As a consequence, I have relied little on the photographs submitted by the tenants.

It is for this reason that a landlord is required to conduct a move in condition inspection and a move out condition inspection. It is also for this reason that the *Act* provides some direction in the completion of these inspections and their subsequent reports.

Section 23 of the *Act* stipulates a move in inspection must be completed with both parties present on the day the tenant is entitled to take possession or on a mutually agreed upon day. The landlord must complete a Condition Inspection Report and have both parties sign the report and *then* give a copy to the tenants. The intention is to capture both parties agreement as to the condition at the start of the tenancy.

Despite the landlords' contention that the move in inspection was completed 6 weeks prior to the start of the tenancy and she sent the tenants a copy of the report for their signature because she did not have a photocopier to provide the tenants with a copy at the time, the landlord has failed to provide a copy of a move in Condition Inspection Report signed by both parties that represents the condition of the rental unit on or near the day the tenancy began.

Even if I were to accept the Condition Inspection Report submitted as an accurate reflection that both parties agreed to as the condition of the rental unit it would have been the condition 6 weeks prior to the start of the tenancy. I accept the tenants' assertion that it is not a true reflection of the condition at the start of the tenancy.

While I do find the landlord's have established the rental unit required some repairs at the end of the tenancy by failing to establish the condition of the rental unit at the start of the tenancy I do not find the landlord has established a loss or damage resulting from a violation of the *Act*, regulation or tenancy agreement.

Having said this the tenants' acknowledge that they did try to touch up the paint in the rental unit using the paint that the landlord had identified in an email dated August 19, 2008 as

touch up paint found in the garage. From the photographic evidence submitted by the landlord I accept that the patches painted are of a slightly different colour than the field of the walls. I also accept that the yard required some cleanup work at the end of the tenancy.

However, the landlord has failed to establish the costs incurred in repairing the paint job or for the work in the yard, that is, the landlord has provided no estimates or receipts for any costs associated with repainting the house or yard work.

In regard to the chandelier, I accept the landlord's assertion that something must have happened to cause the chandelier to loosen. I do not accept the tenants' testimony that the light fixture loosened on its own.

However, I note that the precariousness of the chandelier was reported to the landlord at least 2 months prior to the chandelier giving way completely and being damaged. I therefore find the landlord failed to mitigate any loss associated with the damage to the chandelier. In addition, the landlord has failed to establish the value of the chandelier and its installation.

Finally on the matter of lost rent for one month, while I have accepted the rental unit required some repair work, I find the landlord has failed to establish that the unit was not rentable at the end of the tenancy. Despite the unit requiring some repairs, there is no indication from the evidence submitted that the repairs required vacant occupancy of the rental unit or that the landlord attempted to rent the unit upon receipt of the tenants' notice to end the tenancy so that a new tenancy could have begun immediately following the end of this tenancy.

Conclusion

For the reasons noted above, I dismiss the landlord's Application in its entirety.

As I have dismissed the landlord's application I find the tenants are entitled to the return of their full security deposit pursuant to Section 38 and I grant a monetary order in the amount of **$1,107.89** comprised of $1,100.00 security deposit and $7.89 in interest.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 22, 2010.

Dispute Resolution Officer